

**Re: Social sustainability standards for the sustainability criteria for biofuels.**

**Joint NGO letter to the ad hoc working group.**

25 March 2008

Dear Members of the ad hoc working group on sustainability criteria for biofuels,

This letter is a joint NGO contribution towards the discussions on sustainability criteria for biofuel and bioliquid production as defined by the Directives on Renewable Energies and Fuel Quality. This input involves contributions from a number of development NGOs but does not necessarily reflect the overall positions of the individual organisations.

We recognise the need for comprehensive and enforceable social and environmental sustainability standards in order to minimise the negative impacts of biofuel production at the plantation level. This letter aims to provide you with:

- Criteria for incorporating social and human rights standards into the criteria, and
- Our preliminary position on the conformity of these standards with WTO rules.

**Social and human rights standards must be included in the sustainability criteria.**

The Commission's proposals only specify criteria for 'environmental' sustainability, despite the widely recognised Brundtland definition that includes environmental, social and economic components. The draft text does not provide any safeguards to protect people, particularly in the Global South, from the negative impacts of biofuel production. We believe that the omission of social criteria also contradicts EU policy as set out in the context of promoting sustainability and social rights, e.g. in Council Regulation (EC) No 980/2005 of 27 June 2005. Therefore, by failing to include social criteria, the Commission's proposals inevitably fall short of the member states' requirements.

The EU has ratified and is committed to several Human Rights and ILO conventions, including the legally binding UN Covenants on Economic, Social and Cultural Rights as well as on Civil-Political Rights. Some complementary voluntary social standards and certification schemes also provide accepted best practice standards. However, we also note that none of these schemes takes into account **all** relevant social and human rights standards nor have they been able to implement these criteria in practice without any problems. Therefore the current proposal should go further in assuring social criteria and we hope our suggestions will add to your discussions on criteria for the 10% biofuels target as specified in the Renewable Energies Directive.

We would also like to remind you that, according to the UN Special Rapporteur for the Right to Food, States must respect, protect and support the fulfillment of the right to food of people living in other territories, to fully comply with their obligations under the Right to Food. This obligation requires States to ensure that their policies and practices, citizens and companies, as well as other third parties subject to their jurisdiction, including transnational corporations, do not lead to violations of the right to food in other countries. To this respect, the UN Committee on Economic, Social and Cultural Rights stated that: "States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required."

In the Annex we have incorporated a table which sets out some key criteria for strong social standards that we believe should be incorporated into the sustainability criteria. We have also indicated how these criteria relate to certain relevant EU commitments.

## Conformity of social criteria with WTO rules

Several actors are against the inclusion of strong social criteria, as suggested in the annex, as they say it would contravene WTO rules. The application of social standards related to trade is largely untested within the WTO, so it is impossible to dismiss social sustainability standards as simply illegal. Moreover the WTO agreement explicitly states that trade should be conducted “in accordance with the objective of sustainable development”, a term that includes economic and social development (human rights) and environmental protection<sup>1</sup>. So, one of the fundamental objectives of the WTO is to promote social development.

Certain special exemptions are available under Article XX of the GATT which allows states to take trade measures in order to pursue relevant objectives. So for example, Article XX (b) allows states to take measures in order to protect human life or health. It is possible to argue that most social standards protect human life or health, for example standards relating to health and safety, working hours, access to food and water, etc. It can even be argued that the right to organise and form a union protects human life and health, as it is easy to draw a causal link between worker organisations, improved working conditions and health.

Article XX (a) allows states to take measures to protect public morals. It is therefore possible to argue that standards relating to human rights, such as those pertaining to child labour, forced labour, the right to self-determination (and free, prior and informed consent), the right to freedom from discrimination etc. are also admissible.

Article XX (d) allows states to take measures to secure compliance with laws which are not inconsistent with the WTO Agreement. Because the WTO Agreement’s stated objective is sustainable development, taken to include social development, measures to ensure compliance with ratified international labour and human rights conventions should not be illegal.

Finally, Shrimp-Turtle<sup>2</sup> illustrates that it is possible for states to impose unilateral trade measures via a ‘good faith exemption’ if they are negotiating with other states on the development of standards. Therefore, were the EU to begin multilateral discussions with the principal producer countries on the development of mutually agreed standards, the likelihood of a successful challenge could be greatly reduced. It is worth noting in this respect that the Indonesian and Malaysian governments have expressed their support for the Roundtable on Sustainable Palm Oil (RSPO), which includes extensive social principles and criteria, and that the Brazilian government is also developing a sustainability standard for ethanol, again including social principles and criteria.

Ultimately it is an issue of political will, and whether or not the EU is prepared to match its rhetoric on the importance of human rights and labour standards with action. For example, we note that: *“The EU remains convinced that the promotion of social rights is a positive element in fostering the competitiveness of countries and not an impediment to the development of competitive advantage. The Community’s own experience shows that high standards support economic development. There has been no race to the bottom in Europe: EU legislation ensures minimum standards for occupational health and safety and for working conditions. Social partners are closely involved in this standard setting process. CLS such as non-discrimination in employment and equal opportunities for men and women are guaranteed by EU legislation. Freedom of association and collective bargaining are enshrined in the European Charter of Fundamental Rights.... The European Union is also pursuing the promotion of social rights in the trade context autonomously. The clearest example of that is the Generalised System of Preferences (GSP) which applies a scheme of generalised tariff preferences to those developing countries which have ratified and implemented the following 16 core human and labour rights UN/ILO Conventions<sup>3</sup>.”*

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<sup>1</sup> *WTO and Sustainable Development*, Foreign Policy in Focus, 4 (36), December 1999.

<sup>2</sup> WTO Website: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey2\\_e.htm#turtle](http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey2_e.htm#turtle)

<sup>3</sup> Source: [http://ec.europa.eu/trade/issues/global/social/index\\_en.htm](http://ec.europa.eu/trade/issues/global/social/index_en.htm); listed on next page

In addition to the EU's own responsibilities, the G6 has also reiterated the G8's commitment to "Promoting and further developing social standards".

For the above-mentioned reasons, we strongly urge this working group to introduce strong environmental and social criteria to enable the EU to meet its responsibilities at home and abroad. We are hopeful you can take up the annexed social principles and criteria and suggest them to be included as mandatory safeguards within the respective EU sustainability regulations for biofuels and other biomass imports.

We would, however, like to express our concern about the mandatory 10% biofuel target and believe that at this level biofuels or other bioliquids cannot be produced sustainably. We are particularly concerned with the impacts of such a target on food price inflation, indirect land use changes, the neglecting of staple food production, increased land concentration and expulsion of local populations, which cannot be adequately dealt with within a certification scheme. In this light, we think the target should be dropped, and shall be calling for this especially if the proposed criteria are too weak.

Yours sincerely,

SIGNED.

(in alphabetical order)

**Action for World Solidarity**, Brigitte Kunze, Director

**Action Solidarité Tiers Monde**, Birgit Engel, Development Educator North-South Relations

**Africa Europe Faith & Justice Network**, Christine Fouarge, Policy Officer

**Bread for the World**, Thomas Hirsch, Policy Advisor Climate Change and Food Security

**Climate Alliance of European Cities with the Indigenous Rainforest Peoples**, Thomas Brose, Director

**Down to Earth** (the International Campaign for Ecological Justice in Indonesia (UK)), Liz Chidley, Campaigner

**Ecologistas en Acción**, Tom Kucharz, Agroecology and Food Sovereignty Coordinator

**FIAN-International** (Foodfirst Information and Action Network), Sofia Monsalve Suárez, Land Programme Coordinator

**Friends of the Earth Europe**, Adrian Bebb, Agrofuels Campaign Coordinator

**Misereor**, Ulrike Bickel, Energy Officer

**Portuguese GM-Free Coalition**, Margarida Silva, Coordinator

**Pro REGENWALD**, Hermann Edelmann, Coordinator

**VODO Flemish Platform on Sustainable Development**, Leida Rijnhout, co-ordinator

**Watch Indonesia!** Marianne Klute, Dipl.-Chem Environment Desk

**Wetlands International**, Alex Kaat, Communications Manager

Relevant EU ratifications.

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic, Social and Cultural Rights
3. International Convention on the Elimination of All Forms of Racial Discrimination
4. Convention on the Elimination of All Forms of Discrimination Against Women
5. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
6. Convention on the Rights of the Child
7. Convention on the Prevention and Punishment of the Crime of Genocide
8. Convention concerning Minimum Age for Admission to Employment (No 138)
9. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No 182)
10. Convention concerning the Abolition of Forced Labour (No 105)
11. Convention concerning Forced or Compulsory Labour (No 29)
12. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value (No 100)
13. Convention concerning Discrimination in Respect of Employment and Occupation (No 111)
14. Convention concerning Freedom of Association and Protection of the Right to Organise (No 87)
15. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No 98)
16. International Convention on the Suppression and Punishment of the Crime of Apartheid.